

HOUSE BILL No. 5793

February 9, 2010, Introduced by Reps. Hansen, Rick Jones, Meltzer, Proos, Schuitmaker, Haveman, Booher, Moore, Marleau and Meekhof and referred to the Committee on Tax Policy.

A bill to amend 2007 PA 36, entitled
 "Michigan business tax act,"
 by amending section 417 (MCL 208.1417).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 417. (1) The credit provided in this section shall be
 2 taken ~~after the credits under sections 403 and 405 and~~ before any
 3 other credit under this act and is available to any taxpayer with
 4 gross receipts that do not exceed \$20,000,000.00 and with adjusted
 5 business income minus the loss adjustment that does not exceed
 6 \$1,300,000.00 as adjusted annually for inflation using the Detroit
 7 consumer price index and subject to the following:

8 (a) ~~An~~ **THROUGH DECEMBER 31, 2009, AN** individual, a
 9 partnership, a limited liability company, or a subchapter S
 10 corporation is disqualified if the individual, any 1 partner of the

1 partnership, any 1 member of the limited liability company, or any
2 1 shareholder of the subchapter S corporation receives more than
3 \$180,000.00 as a distributive share of the adjusted business income
4 minus the loss adjustment of the individual, the partnership, the
5 limited liability company, or the subchapter S corporation.

6 BEGINNING JANUARY 1, 2010, AN INDIVIDUAL, A PARTNERSHIP, A LIMITED
7 LIABILITY COMPANY, OR A SUBCHAPTER S CORPORATION IS DISQUALIFIED IF
8 THE INDIVIDUAL, ANY 1 PARTNER OF THE PARTNERSHIP, ANY 1 MEMBER OF
9 THE LIMITED LIABILITY COMPANY, OR ANY 1 SHAREHOLDER OF THE
10 SUBCHAPTER S CORPORATION RECEIVES MORE THAN \$250,000.00 AS ADJUSTED
11 ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE INDEX AS A
12 DISTRIBUTIVE SHARE OF THE ADJUSTED BUSINESS INCOME MINUS THE LOSS
13 ADJUSTMENT OF THE INDIVIDUAL, THE PARTNERSHIP, THE LIMITED
14 LIABILITY COMPANY, OR THE SUBCHAPTER S CORPORATION.

15 (b) ~~A~~—THROUGH DECEMBER 31, 2009, A corporation other than a
16 subchapter S corporation is disqualified if either of the following
17 ~~occur~~—OCCURS for the respective tax year:

18 (i) Compensation and directors' fees of a shareholder or
19 officer exceed \$180,000.00.

20 (ii) The sum of the following amounts exceeds \$180,000.00:

21 (A) Compensation and directors' fees of a shareholder.

22 (B) The product of the percentage of outstanding ownership or
23 of outstanding stock owned by that shareholder multiplied by the
24 difference between the sum of business income and, to the extent
25 deducted in determining federal taxable income, a carryback or a
26 carryover of a net operating loss or capital loss, minus the loss
27 adjustment.

1 (C) BEGINNING JANUARY 1, 2010, A CORPORATION OTHER THAN A
2 SUBCHAPTER S CORPORATION IS DISQUALIFIED IF EITHER OF THE FOLLOWING
3 OCCURS FOR THE RESPECTIVE TAX YEAR:

4 (i) COMPENSATION AND DIRECTORS' FEES OF A SHAREHOLDER OR
5 OFFICER EXCEED \$250,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING
6 THE DETROIT CONSUMER PRICE INDEX.

7 (ii) THE SUM OF THE FOLLOWING AMOUNTS EXCEEDS \$250,000.00 AS
8 ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE
9 INDEX:

10 (A) COMPENSATION AND DIRECTORS' FEES OF A SHAREHOLDER.

11 (B) THE PRODUCT OF THE PERCENTAGE OF OUTSTANDING OWNERSHIP OR
12 OF OUTSTANDING STOCK OWNED BY THAT SHAREHOLDER MULTIPLIED BY THE
13 DIFFERENCE BETWEEN THE SUM OF BUSINESS INCOME AND, TO THE EXTENT
14 DEDUCTED IN DETERMINING FEDERAL TAXABLE INCOME, A CARRYBACK OR A
15 CARRYOVER OF A NET OPERATING LOSS OR CAPITAL LOSS, MINUS THE LOSS
16 ADJUSTMENT.

17 (D) ~~(c) Subject~~ THROUGH DECEMBER 31, 2009, SUBJECT to the
18 reduction percentage determined under subsection (3), the credit
19 determined under this subsection shall be reduced by the following
20 percentages in the following circumstances:

21 (i) If an individual, any 1 partner of the partnership, any 1
22 member of the limited liability company, or any 1 shareholder of
23 the subchapter S corporation receives as a distributive share of
24 adjusted business income minus the loss adjustment of the
25 individual, partnership, limited liability company, or subchapter S
26 corporation; if compensation and directors' fees of a shareholder
27 or officer of a corporation other than a subchapter S corporation

1 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
2 is more than \$160,000.00 but less than \$165,000.00, the credit is
3 reduced by 20%.

4 (ii) If an individual, any 1 partner of the partnership, any 1
5 member of the limited liability company, or any 1 shareholder of
6 the subchapter S corporation receives as a distributive share of
7 adjusted business income minus the loss adjustment of the
8 individual, partnership, limited liability company, or subchapter S
9 corporation; if compensation and directors' fees of a shareholder
10 or officer of a corporation other than a subchapter S corporation
11 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
12 is \$165,000.00 or more but less than \$170,000.00, the credit is
13 reduced by 40%.

14 (iii) If an individual, any 1 partner of the partnership, any 1
15 member of the limited liability company, or any 1 shareholder of
16 the subchapter S corporation receives as a distributive share of
17 adjusted business income minus the loss adjustment of the
18 individual, partnership, limited liability company, or subchapter S
19 corporation; if compensation and directors' fees of a shareholder
20 or officer of a corporation other than a subchapter S corporation
21 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
22 is \$170,000.00 or more but less than \$175,000.00, the credit is
23 reduced by 60%.

24 (iv) If an individual, any 1 partner of the partnership, any 1
25 member of the limited liability company, or any 1 shareholder of
26 the subchapter S corporation receives as a distributive share of
27 adjusted business income minus the loss adjustment of the

1 individual, partnership, limited liability company, or subchapter S
2 corporation; if compensation and directors' fees of a shareholder
3 or officer of a corporation other than a subchapter S corporation
4 are; or if the sum of the amounts in subdivision (b) (ii) (A) and (B)
5 is \$175,000.00 or more but not in excess of \$180,000.00, the credit
6 is reduced by 80%.

7 (E) BEGINNING JANUARY 1, 2010, SUBJECT TO THE REDUCTION
8 PERCENTAGE DETERMINED UNDER SUBSECTION (3), THE CREDIT DETERMINED
9 UNDER THIS SUBSECTION SHALL BE REDUCED BY THE FOLLOWING PERCENTAGES
10 IN THE FOLLOWING CIRCUMSTANCES:

11 (i) IF AN INDIVIDUAL, ANY 1 PARTNER OF THE PARTNERSHIP, ANY 1
12 MEMBER OF THE LIMITED LIABILITY COMPANY, OR ANY 1 SHAREHOLDER OF
13 THE SUBCHAPTER S CORPORATION RECEIVES AS A DISTRIBUTIVE SHARE OF
14 ADJUSTED BUSINESS INCOME MINUS THE LOSS ADJUSTMENT OF THE
15 INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR SUBCHAPTER S
16 CORPORATION; IF COMPENSATION AND DIRECTORS' FEES OF A SHAREHOLDER
17 OR OFFICER OF A CORPORATION OTHER THAN A SUBCHAPTER S CORPORATION
18 ARE; OR IF THE SUM OF THE AMOUNTS IN SUBDIVISION (C) (ii) (A) AND (B)
19 IS MORE THAN \$230,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING
20 THE DETROIT CONSUMER PRICE INDEX BUT LESS THAN \$235,000.00 AS
21 ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE
22 INDEX, THE CREDIT IS REDUCED BY 20%.

23 (ii) IF AN INDIVIDUAL, ANY 1 PARTNER OF THE PARTNERSHIP, ANY 1
24 MEMBER OF THE LIMITED LIABILITY COMPANY, OR ANY 1 SHAREHOLDER OF
25 THE SUBCHAPTER S CORPORATION RECEIVES AS A DISTRIBUTIVE SHARE OF
26 ADJUSTED BUSINESS INCOME MINUS THE LOSS ADJUSTMENT OF THE
27 INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR SUBCHAPTER S

1 CORPORATION; IF COMPENSATION AND DIRECTORS' FEES OF A SHAREHOLDER
2 OR OFFICER OF A CORPORATION OTHER THAN A SUBCHAPTER S CORPORATION
3 ARE; OR IF THE SUM OF THE AMOUNTS IN SUBDIVISION (C) (ii) (A) AND (B)
4 IS \$235,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT
5 CONSUMER PRICE INDEX OR MORE BUT LESS THAN \$240,000.00 AS ADJUSTED
6 ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE INDEX, THE
7 CREDIT IS REDUCED BY 40%.

8 (iii) IF AN INDIVIDUAL, ANY 1 PARTNER OF THE PARTNERSHIP, ANY 1
9 MEMBER OF THE LIMITED LIABILITY COMPANY, OR ANY 1 SHAREHOLDER OF
10 THE SUBCHAPTER S CORPORATION RECEIVES AS A DISTRIBUTIVE SHARE OF
11 ADJUSTED BUSINESS INCOME MINUS THE LOSS ADJUSTMENT OF THE
12 INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR SUBCHAPTER S
13 CORPORATION; IF COMPENSATION AND DIRECTORS' FEES OF A SHAREHOLDER
14 OR OFFICER OF A CORPORATION OTHER THAN A SUBCHAPTER S CORPORATION
15 ARE; OR IF THE SUM OF THE AMOUNTS IN SUBDIVISION (C) (ii) (A) AND (B)
16 IS \$240,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT
17 CONSUMER PRICE INDEX OR MORE BUT LESS THAN \$245,000.00 AS ADJUSTED
18 ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE INDEX, THE
19 CREDIT IS REDUCED BY 60%.

20 (iv) IF AN INDIVIDUAL, ANY 1 PARTNER OF THE PARTNERSHIP, ANY 1
21 MEMBER OF THE LIMITED LIABILITY COMPANY, OR ANY 1 SHAREHOLDER OF
22 THE SUBCHAPTER S CORPORATION RECEIVES AS A DISTRIBUTIVE SHARE OF
23 ADJUSTED BUSINESS INCOME MINUS THE LOSS ADJUSTMENT OF THE
24 INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR SUBCHAPTER S
25 CORPORATION; IF COMPENSATION AND DIRECTORS' FEES OF A SHAREHOLDER
26 OR OFFICER OF A CORPORATION OTHER THAN A SUBCHAPTER S CORPORATION
27 ARE; OR IF THE SUM OF THE AMOUNTS IN SUBDIVISION (C) (ii) (A) AND (B)

1 IS \$245,000.00 AS ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT
2 CONSUMER PRICE INDEX OR MORE BUT NOT IN EXCESS OF \$250,000.00 AS
3 ADJUSTED ANNUALLY FOR INFLATION USING THE DETROIT CONSUMER PRICE
4 INDEX, THE CREDIT IS REDUCED BY 80%.

5 (2) For the purposes of determining disqualification under
6 subsection (1), an active shareholder's share of business income
7 shall not be attributed to another active shareholder.

8 (3) To determine the reduction percentage under subsection
9 ~~(1)(e)~~ (1) (D) OR (E), **WHICHEVER IS APPLICABLE**, the following apply:

10 (a) The reduction percentage for a partnership, limited
11 liability company, or subchapter S corporation is based on the
12 distributive share of adjusted business income minus loss
13 adjustment of the partner, member, or shareholder with the greatest
14 distributive share of adjusted business income minus loss
15 adjustment.

16 (b) The reduction percentage for a corporation other than a
17 subchapter S corporation is the greater of the following:

18 (i) The reduction percentage based on the compensation and
19 directors' fees of the shareholder or officer with the greatest
20 amount of compensation and directors' fees.

21 (ii) The reduction percentage based on the sum of the amounts
22 in subsection (1)(b)(ii)(A) and (B) **OR (1)(C)(ii)(A) AND (B),**
23 **WHICHEVER IS APPLICABLE**, for the shareholder or officer with the
24 greatest sum of the amounts in subsection (1)(b)(ii)(A) and (B) **OR**
25 **(1)(C)(ii)(A) AND (B), WHICHEVER IS APPLICABLE.**

26 (4) A taxpayer that qualifies under subsection (1) is allowed
27 a credit against the tax imposed under this act. The credit under

1 this subsection is the amount by which the tax imposed under this
2 act exceeds 1.8% of adjusted business income.

3 (5) If gross receipts exceed \$19,000,000.00, the credit shall
4 be reduced by a fraction, the numerator of which is the amount of
5 gross receipts over \$19,000,000.00 and the denominator of which is
6 \$1,000,000.00. The credit shall not exceed 100% of the tax
7 liability imposed under this act.

8 (6) For a taxpayer that reports for a tax year less than 12
9 months, the amounts specified in this section for gross receipts,
10 adjusted business income, and share of business income shall be
11 multiplied by a fraction, the numerator of which is the number of
12 months in the tax year and the denominator of which is 12.

13 (7) The department shall permit a taxpayer that elects to
14 claim the credit allowed under this section based on the amount by
15 which the tax imposed under this act exceeds the percentage of
16 adjusted business income for the tax year as determined under
17 subsection (4), and that is not required to reduce the credit
18 pursuant to subsection (1) or (5), to file and pay the tax imposed
19 by this act without computing the tax imposed under sections 201
20 and 203.

21 (8) Compensation paid by the professional employer
22 organization to the officers of the client and to employees of the
23 professional employer organization who are assigned or leased to
24 and perform services for the client shall be included in
25 determining eligibility of the client under this section.

26 (9) As used in this section:

27 (a) "Active shareholder" means a shareholder who receives at

1 least \$10,000.00 in compensation, directors' fees, or dividends
2 from the business, and who owns at least 5% of the outstanding
3 stock or other ownership interest.

4 (b) "Adjusted business income" means business income as
5 defined in section 105 with all of the following adjustments:

6 (i) Add compensation and directors' fees of active shareholders
7 of a corporation.

8 (ii) Add, to the extent deducted in determining federal taxable
9 income, a carryback or a carryover of a net operating loss.

10 (iii) Add, to the extent deducted in determining federal taxable
11 income, a capital loss.

12 (iv) Add compensation and directors' fees of officers of a
13 corporation.

14 (c) "Detroit consumer price index" means the most
15 comprehensive index of consumer prices available for the Detroit
16 area from the United States department of labor, bureau of labor
17 statistics.

18 (d) "Loss adjustment" means the amount by which adjusted
19 business income was less than zero in any of the 5 tax years
20 immediately preceding the tax year for which eligibility for the
21 credit under this section is being determined. In determining the
22 loss adjustment for a tax year, a taxpayer is not required to use
23 more of the taxpayer's total negative adjusted business income than
24 the amount needed to qualify the taxpayer for the credit under this
25 section. A taxpayer shall not be considered to have used any
26 portion of the taxpayer's negative adjusted business income amount
27 unless the portion used is necessary to qualify for the credit

1 under this section. A taxpayer shall not reuse a negative adjusted
2 business income amount used as a loss adjustment in a previous tax
3 year or use a negative adjusted business income amount from a year
4 in which the taxpayer did not receive the credit under this
5 section.

6 Enacting section 1. This amendatory act is retroactive and
7 effective January 1, 2010.

8 Enacting section 2. This amendatory act does not take effect
9 unless Senate Bill No. ____ or House Bill No. 5795 (request no.
10 03003'09) of the 95th Legislature is enacted into law.